

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	Case No. 4:20-CR-00212
)	
DEBRA LYNN MERCER-ERWIN (1))	
)	
Defendants.)	

MOTION IN LIMINE REGARDING EXPERT TESTIMONY

Defendant Debra Lynn Mercer-Erwin (the “Defendant”), by and through her attorneys, Joe E. White, Jr., Charles C. Weddle III, Kate C. White, and Matthew P. Cyran, respectfully files this Motion in Limine regarding the government’s use of any expert testimony in the trial of the instant case. In support, Ms. Mercer-Erwin states as follows:

INTRODUCTION

Ms. Mercer-Erwin is a resident of Oklahoma. Since 2014, Ms. Mercer-Erwin has been the owner of Aircraft Guaranty Corporation Holdings (“AGC”) and Wright Brothers Aircraft Title, Inc. (“WBAT”). The Defendant is charged by way of a Fifth Superseding Indictment with six different conspiracies and one substantive count.

Much of the government’s evidence in the instant case revolves around the financial transactions of WBAT. The government alleges that hundreds of millions of dollars were involved in numerous aircraft transactions. It is unclear whether the government intends to elicit this evidence by way of the testimony of federal agents or through some other individual experienced in these types of complicated and nuanced transactions. In either event, the government should not be permitted to introduce such expert evidence to the jury.

ARGUMENT AND AUTHORITIES

Expert testimony is generally considered admissible if it will assist the jury in understanding information which they are not generally aware. See *United States v. Angleton*, 269 F. Supp. 2d 868 (S.D. Texas, June 9, 2003).

Federal Rule of Evidence 702 controls expert witness testimony.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702.

The Defendant anticipates that the government will attempt to introduce testimony about the financial transactions involving the WBAT escrow accounts and the aircraft transactions that went through them. This information is highly complicated and unique to the nuanced world of aviation finance.

Pursuant to Fed. R. Crim. P. 16, the Defendant has requested that the government produce a “Written summary of the testimony of any expert witness that the government intends to use during its case-in-chief, along with the witness’ qualifications, the witness’s opinion and the basis underlying the opinions, Fed. R. Crim. P. 16(a)(1)(G).” See letter dated June 13, 2022, attached as Exhibit 1.

To date, the government has not produced any expert witness reports, summaries, qualifications, opinions, or the underlying basis for any such opinion. It is the Defendant’s belief

that the government has duplicated and relied on spreadsheets prepared by the fugitive Federico Machado and performed no forensic accounting of its own. It is possible that the government intends to have agents from the United States Department of Homeland Security or the United States Department of Commerce, Bureau of Industry and Security testify regarding these financial dealings. The federal law enforcement involved in this case will not have the pedigree to testify to such complicated financial business matters. Even if they do, such testimony requires qualifications as an expert, and the government has failed to produce any of the requested reports and materials pursuant to Fed. R. Crim. P. 16.

If the government intends to call a specialized witness to testify about these escrow accounts, such as a Certified Public Accountant, the same issue arises. Despite the Defendant's request, the government has never produced any expert materials. Accordingly, no such testimony should be allowed. "When a criminal defendant requests that the Government provide an item that is material to preparing their defense, the Government must make the item available for inspection and copying, so long as it is within the Government's possession, custody, or control." *United States v. de Leon*, 2022 WL 4102874 (W.D. Texas, September 8, 2022). Any materials that may be contained within the personnel files of a federal agent are subject to production pursuant to Fed. R. Crim. P. 16. "Materials in the possession of another federal agency are often considered to be within the Government's possession for purposes of Rule 16, particularly where that agency contributes significantly to the investigation or prosecution." *Id.*

At this juncture, so close to trial, it would prejudice the Defendant to allow the government to present expert testimony that the Defendant has now had no opportunity to refute. Accordingly,

justice requires exclusion of any such testimony. “If a party fails to disclose evidence in compliance with Rule 16, the court may enter any order ‘that is just under the circumstances.’” *Id.*

CONCLUSION

The Defendant respectfully requests that the Court rule in advance of trial that the government be prohibited from introducing any expert testimony in any way in front of the jury.

Respectfully submitted,

s/ Joe E. White, Jr.

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CERTIFICATE OF DELIVERY

☒ I hereby certify that on this 3rd day of April, 2023, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing, which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Joe E. White, Jr.
JOE E. WHITE, JR.

CERTIFICATE OF CONFERENCE

Pursuant to United States District Court for the Eastern District of Texas Local Rule CR-47(a)(3), on April 3, 2023, defense counsel for the Defendant Debra Mercer-Erwin has conferred with Ernest Gonzalez, Assistant United States Attorney in a good faith effort to resolve the matter without Court intervention and advises the Court that the United States has not responded so it is presumed that the United States opposes this motion.

s/ Joe E. White, Jr.
JOE E. WHITE, JR.